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March 8, 2022

Via Electronic and First-Class Mail

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Hon. Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460
regan.michael@epa.gov

Re: *Request to Withdraw Final Rule and Request for Stay Pending Judicial Review*

Dear Administrator Regan,

We submit this letter on behalf of Cheniere Energy, Inc. (Cheniere), which hereby requests the Environmental Protection Agency (EPA) withdraw or stay pending judicial review the rule finalized on February 28, 2022 titled “National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines; Amendments.”¹ For the reasons discussed below, Cheniere asks EPA to withdraw the rule *before* it takes effect or, alternatively, stay the rule pending judicial review.

Cheniere is an international energy company headquartered in Houston, Texas, and is the leading producer of liquefied natural gas (LNG) in the United States. Cheniere provides clean, secure, and affordable energy to the world, while responsibly delivering a reliable, competitive, and integrated source of LNG, in a safe and rewarding work environment.

The rule lifts a 2004 regulatory stay of the effectiveness of emission standards for certain stationary combustion turbines and would take effect the day the rule is published in the Federal Register.² If this happens, turbines that were permitted, authorized, built, installed, and operated in reliance on applicable requirements in effect at the time will need to demonstrate compliance with emission standards within 180 days—a timeline that is insufficient to address complex technical and engineering concerns. Not only did Cheniere rely on applicable requirements in effect at the time, but so did the Federal Energy Regulatory Commission, state air permitting authorities operating under EPA-approved programs, and

¹ National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines; Amendments, https://www.epa.gov/system/files/documents/2022-03/5909.1_turbineneshapamendments_final_20220225.admin-wd disclaimer.pdf (prepublication version).

² Prepublication Final Rule at 1.

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EPA itself, through both its ability to comment on Cheniere's PSD permits (which include applicable federal requirements) and through its role as a cooperating agency in the FERC permitting process.

EPA relies on "recent caselaw concerning stays issued under the authority of the Clean Air Act and the Administrative Procedure Act" to justify lifting the stay. Although EPA's position is without citation, the cases that we presume EPA is referencing actually support EPA authority to withdraw a not yet effective rule at any time and to issue a stay pending judicial review of a published final rule where "justice so requires."³ That standard is met here.

The rule would have implications across the domestic energy sector and particularly in the LNG industry at a time when Russia's invasion of Ukraine has shaken global energy markets and threatens to disrupt energy supply to Europe, where U.S. LNG has a significant role to play in providing reliable supplies of natural gas. Cheniere operates two LNG facilities on the U.S. Gulf Coast where it uses 62 of the combustion turbines that will become subject to the rule. The vast majority of these turbines are necessary to drive compressors integral to the refrigeration process to liquefy natural gas. The design of Cheniere's LNG terminals is complex, and the subject turbines are located on elevated pedestals with limited space for installing control equipment. Accordingly, significant case-by-case design and engineering work may be required to determine feasibility of control installation and options. Potentially imposing significant costs and operational disruption on the U.S. LNG industry at the same time the Administration is focused on Europe's strategic need to break its reliance on Russian gas is counterproductive. It is also unnecessary considering that the risks from combustion turbine HAPs are minimal and that EPA is actively considering a petition to delist these very turbines.

With respect to this last point, it is not clear why EPA now wishes to lift the 2004 stay when the Agency is considering further action that might result in delisting all stationary combustion turbines. This is contrary to the Agency's position on two other occasions. Specifically, when EPA first issued the stay in 2004, industry raised serious questions regarding the need to regulate emissions from the subcategories at issue. As a result, EPA issued this stay "to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted."⁴⁵ More recently, in March 2020, EPA again concluded it was appropriate to delay taking action to remove the stay until it makes a

³ 5 U.S.C. § 705; see, e.g., *Becerra v. U.S. Dep't of Interior*, 276 F.Supp.3d 953, 963–64 (N.D. Cal. 2017) (plain language of 5 U.S.C. § 705 allows an agency to suspend a rule after its effective date pending judicial review but does not authorize a stay of the rule's compliance date); *California v. U.S. Bureau of Land Management*, 277 F.Supp.3d 1106, 1118–19 (N.D. Cal. 2017) (rejecting arguments under 5 U.S.C. § 705 that an agency could stay the compliance date of a postponed rule because the compliance date functioned as a second effective date); *Air Alliance Houston v. EPA*, 906 F.3d 1049, 1060–61 (D.C. Cir. 2018) (plain language of 42 U.S.C. § 7607(d)(7)(B) limits a stay of a final EPA action to 90 days even if that time is insufficient to conduct mandatory reconsideration of the action); *Clean Air Council v. Pruitt*, 862 F.3d 1, 10 (D.C. Cir. 2017) (a stay of a final EPA action under 42 U.S.C. § 7606(d)(7)(B) is lawful only if the agency's reconsideration of the rule meets the statutory test for mandatory reconsideration).

⁴ Prepublication Final Rule at 6.

⁵ "Inhalation Human Health Risk Assessment for U.S. Stationary Combustion Turbines 2014 Base Year Evaluation," Final Report, EPRI Product No. 3002016528 (May 2019).

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determination regarding the pending delisting petition “so that turbine owners and operators do not make expenditures on emission controls and performance testing that will not be required if the source category is delisted.”⁶ Withdrawing this rule that removes the stay or staying it pending judicial review would provide time for EPA to fully consider the delisting petition, while also avoiding the imposition of “wasteful and unwarranted expenditures” that may ultimately be unnecessary if the category is delisted.

While the underlying rule was finalized in 2004, multiple EPA administrations since that time have kept the stay in place to avoid unwarranted expenditures while the Agency assesses delisting petitions and the very validity of the underlying Subpart YYYY compliance requirements for these combustion turbines. However, it is not just the removal of the stay that is troubling. It is also troubling that despite numerous comments from operators of combustion turbines that complex retrofits could take years to design, engineer, and install, the Agency still put forth a far too short 180 day compliance timeline.

For all of these reasons, Cheniere respectfully requests that EPA withdraw the rule before it takes effect or, alternatively, stay the rule pending judicial review.

Best regards,



Ms. Brittany M. Pemberton
Partner

cc (via email):

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⁶ 85 Fed. Reg. 13,524 at 13,527 (Mar. 9, 2020).